

STATE OF MICHIGAN
COURT OF APPEALS

KATHLEEN KINNEY and ARCHIE KINNEY,

Plaintiffs-Appellants,

v

JACQUELINE RENEE CRANE and BOYD
CRANE,

Defendants-Appellees.

UNPUBLISHED

June 24, 2014

No. 314191

Wayne Circuit Court

LC No. 09-012270-NI

Before: JANSEN, P.J., and MURRAY and BOONSTRA, JJ.

JANSEN, P.J. (*concurring in part and dissenting in part*).

I concur with the majority's determination that plaintiffs failed to factually support their claim of common-law strict liability and that the only issue in this appeal is whether they presented sufficient admissible evidence to withstand summary disposition of their negligence claim.

I respectfully dissent, however, from the majority's conclusion that defendants were entitled to summary disposition with respect to the negligence claim. Both parties, as well as the circuit court, appear to have been confused regarding the nature of common-law actions against dog owners in Michigan. Establishing a dog's propensity for viciousness is central to maintaining a claim of common-law strict liability. *Hiner v Mojica*, 271 Mich App 604, 609; 722 NW2d 914 (2006). But propensity, alone, is not central to a negligence claim. Indeed, this Court has held that a plaintiff may maintain a negligence action against "the owner of a domestic animal who does *not* have knowledge of the animal's dangerous propensities" *Id.* at 612 (emphasis in original).

In this case, there was evidence that the dogs approached plaintiffs in an aggressive manner, knocked plaintiff Kathleen Kinney nearly to the ground, scratched her, and continued to circle around her until defendant Boyd Crane removed the animals. There was also evidence that this aggravated plaintiff Kathleen Kinney's preexisting back injury. For purposes of plaintiffs' negligence claim, as opposed to their strict-liability claim, it is not dispositive that the dogs did not growl, bark, snarl, bite, or snip. "To make a prima facie showing of negligence, a plaintiff need only establish that the defendant failed to exercise ordinary care under the circumstances to control or restrain the animal." *Id.* at 613. This was a question for the trier of fact. In my opinion, reasonable minds could conclude that defendants failed to exercise ordinary care, and

were therefore negligent, in failing to properly control and restrain their dogs under the circumstances of this case. *Id.* at 614; see also *Trager v Thor*, 445 Mich 95, 107; 516 NW2d 69 (1994). I would reverse the circuit court's grant of summary disposition in favor of defendants on plaintiffs' negligence claim.

/s/ Kathleen Jansen